

## BREXIT SPECIAL

### In the wake of June's referendum, which concluded with the UK voting to leave the EU, specialist transport law firm Backhouse Jones outlines the impact



The UK's vote to leave the European Union gives the prime minister a mandate to serve 'notice to leave'. At a time of her choosing Theresa May will invoke Article 50, which triggers the two-year exit period and associated negotiations. So it will be at least 2018 before anything changes substantially.

While leaving the EU does involve setting aside all EU regulations, many have already been incorporated into UK law, or were derived from regulatory structures that predate the UK's membership. Such legislation will not be set aside once the exit period is concluded. Moreover, negotiations may involve the UK agreeing to continue some EU transport and employment legislation that would otherwise be lost.

#### **Operator licensing**

The Goods Vehicles (Licensing of Operators) Act 1995 and the Public Passenger Vehicles Act 1981 are UK legislation that will not be lost on Brexit - although financial standing and repute may see changes. However, the UK is unlikely to see the scope of goods vehicle licensing excluded to sub 3,500kg vehicles as mooted by the EU.

#### **Driver CPC**

These regulations are unlikely to change. Although created by the EU, the UK is a signatory of AETR (European Agreement Concerning the Work of Crews of Vehicles Engaged in International Road Transport), which includes Driver CPC. Remaining a signatory of AETR is expected to be a condition of ongoing trade with the EU.

#### **Tachos and drivers' hours**

These are governed by EU Regulations 561/2006 and 651/2014 so might no longer apply on Brexit. However, as with Driver CPC, AETR incorporates these rules so they are likely to continue. Additionally, the Transport Act 1968 incorporates these rules.

#### **Cabotage and PSV EU operations**

The right to cabotage using goods and passenger vehicles will be removed unless negotiations with the EU preserve them. Operators carrying out journeys across the EU are advised to engage in dialogue, perhaps through trade associations, to ensure that the government is aware of the issues.

#### **Driver licensing**

This is harmonised within the EU and is unlikely to change at least in the mid term.

#### **Immigration**

It is probable that EU migrants already here will be able to stay. It is also possible the UK will maintain free movement of labour in return for access to the single market. However, an alternative is an Australian-style points system. However, with the devaluation of the pound and potential cuts to benefits, migrant workers may choose to leave. Given the industry's reliance on immigrants for its workforce, this could worsen the skills crisis.

#### **Currency and costs**

Expect volatility in the value of the pound, particularly during the two-year negotiations, which may significantly impact operator costs. Oil, for example, is traded in dollars, so a weak pound will force fuel price rises.

#### **Transfer of undertakings**

It is very unlikely that TUPE - Transfer of Undertakings (Protection of Employment) - laws will be repealed. However, there may be a push from

businesses to persuade the government to enact changes that make it easier to harmonise employees' terms and conditions post transfer to new ownership. Similarly, businesses may want to reduce the burden of information and consultation procedures.

#### **Holidays**

Many employers are unhappy with the right of employees to accrue holiday while on sick leave. Recent European court decisions have also dictated UK working time laws concerning the inclusion of commission and non-guaranteed overtime in the calculation of holiday pay. Brexit might allow the government to consider changes towards more business-friendly regulations.

#### **Discrimination law**

There is an appetite to limit the compensation employees may be awarded in discrimination claims. Other changes in discrimination law are unlikely. Discrimination and harassment are not behaviours any likely UK government would look to encourage. Current rights are likely to be protected.

#### **Caveat**

While UK employment law is almost certainly not going to change significantly in the wake of the vote to leave the EU, the UK political landscape may well change. Watch this space.